Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No._____

IN THE

Supreme Court of the United States

TROY SCHWIEGERATH,
Petitioner,

v.

THE EIGHTEENTH JUDICIAL DISTRICT, the District,
THE DISTRICT COURT OF DOUGLAS COUNTY, the Court,
BETH-ELLIOTT DUMMLER, the Magistrate,
CHERYL LANE, the Clerk of the Court,
ELIZABETH HOLMAN, the Special Advocate,
and, MARY MULLARKEY, the Chief Judicial Administrator,
Respondents.

On Petition for Writ of Certiorari To The Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

Petitioner: *Pro Se*
TROY SCHWIEGERATH,
6955 POLK AVENUE
LITTLETON, CO 80123
(303)-933-2154

INTRODUCTION

In January of 2001, a committee commissioned by the Chief Justice of the Colorado Judicial Branch resolved to subordinate due process protections afforded by Colorado child and family law, policy, practice and procedure. The Colorado Judicial Branch continues to administer changes accordingly. In an original action in the Colorado Supreme Court, the Petitioner identified some of the harmful consequences of these changes.

QUESTIONS PRESENTED

Whether state judicial officers may require litigants to pay private agencies to perform public judicial functions?

Whether litigants ordered to pay private firms to perform judicial functions have a right to the underlying data acquired?

May a state judicial district and its subdivisions restrict a *pro se* litigant's filing access because of the content of his pleadings?

Whether a minimal constitutional standard must be met before permanent orders affecting children are re-opened for adjudication?

Where legal proceedings implicate fundamental rights, is a state court required ensure that parties receive constitutional notice?

PARTIES TO THE PROCEEDINGS

All named Respondents to the original action decided In the

Colorado Supreme Court are included in the caption for this Petition.

Petitioner: The Petitioner is a *pro se* party to proceedings in which he challenged the constitutionality of Colorado child and family law, policy, and procedure.

Troy Schwiegerath, as the *pro se* Petitioner.

Respondents: The Respondents have varying roles in the creation, implementation, and administration of child and family law, policies, and procedure in the Colorado State Judicial Branch.

Mary Mullarkey, as the Chief Justice of the Colorado Supreme Court and the Chief Judicial Administrator for the Colorado Judicial Branch. Magistrate **Beth Elliott-Dummler**, as the presiding Magistrate in the District Court for the County of Douglas. **Cheryl Lane**, as the Clerk of the District Court for the County of Douglas. **Elizabeth Hollman**, as the Special Advocate or court appointee. The **Eighteenth Judicial District**, as a judicial division of the State of Colorado.

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CASES

Board of Trustees v. Garrett, 531 U.S. 356 (2001).
Mitchum v. *Foster*, 407 U.S. 225 (1972).
City of Littleton v. Z. J. Gifts D-4, L.L.C., 541 U.S. 774 (2004).
Morrison v. Lipscomb, 877 F.2d 463 (6th Cir. 1989).
Tennessee v. Lane, 541 U.S. 509 (2004).
Quinn v. *Syracuse Model Neighborhood Corp.*, 613 F.2d 438

(2d Cir. 1980).
Boddie v. *Connecticut*, 401 U. S. 371, 379 (1971).
Elrod v. Burns, 427 U.S. 347 (1976).
Gibbs v. King, 779 F 2d 1040 (5th Cir. 1986).

Bush v. Gore, 531 U.S. 98 (2000).
M.L.B. v. S.L.J., 519 U.S. 102 (1996)
Michetti Pipe Stringing, Inc. v. Murphy Bros., Inc., 526 US 344 (1999).

Faretta v. California, 422 U.S. 806 (1974).

Santosky v. Kramer, 455 U.S. 745 (1982).
Washington v. *Glucksberg*, 521 U.S. 702 (1997).
Stanley v. *Illinois*, 405 U.S. 645 (1971).
Troxel v. Granville, 530 U.S. 57 (2000).
Romer v. *Evans*, 517 U.S. 620 (1996).
Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986). *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975).
Chambers v. *Mississippi*, 410 U.S. 284 (1973).
Dutton v. *Evans*, 400 U.S. 74 (1970).

STATUTES

28 U.S.C. § 1257
State courts; certiorari
(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question

or where the validity of a statute of any State is drawn in question on

the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

C.R.S. § 14-10-116 (*See* Appendix)

RULES

Sup. Ct. R. 10(b)

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Sup. Ct. R. 13

CONSTITUTION

Article III cl. 2

JURISDICTIONAL STATEMENT

Jurisdiction is conferred to this Court by Article III cl. 2 of the United States Constitution. The Petitioner Invokes 28 U.S.C. § 1257(a) as the basis to request this Court's review. The Colorado Supreme Court dismissed the Petitioner's action summarily and without opinion on May 26th, 2005. The Colorado Supreme Court is the highest state court in which a decision could be had for the Petitioner. The Colorado Supreme Court denied the Petition for Rehearing

on May 26th, 2005. This Petition is timely filed within ninety days of the dismissal. *See* Sup. Ct. R. 13. This Petition is submitted in accordance with the standards for review enumerated by this Court. *See* Sup. Ct. R. 10(b) and 10(c). This Court is entrusted with supervisory power over all inferior judicial officers and tribunals as established by Article III cl. 2 of the United States Constitution. Inferior judicial officers must uphold the United States Constitution. This Court's supervisory powers are separable from and collateral to appellate and original jurisdiction.

HOW THE FEDERAL QUESTIONS WERE RAISED AND PASSED UPON

The Petitioner's permanent orders on the dissolution of his former marriage were decided on October 19, 2002. The trial court[1] re-opened permanent orders without cause. The Petitioner questioned the constitutionality of the trial court's action. The trial court retaliated against the Petitioner.

The child and family laws, customs, practices and procedures, promulgated primarily by the Chief Justice[2], are designed to perpetuate ongoing litigation. The trial court entered an order on a pleading that the Petitioner was not served with. (Pet. App. 5-A to 12-A; 15-A to 19-A; 22-A to 27-A). The Magistrate[3], through the *Multi-Door Court Services Office* pilot program, required the Petitioner to re-litigate permanent orders. (Pet. App. 5-A to 12-a; 33-A to 36-A). This pilot program originated in the judicial district

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[1] Magistrate Beth Elliott-Dummler of the Douglas County District Court in Eighteenth Judicial District of the Colorado Judicial Branch of the Colorado State Government.

[2] Mary Mullarkey

[3] *Id.*

in which the trial court is located. (Pet. App. 189-A to 217-A). The trial court ordered the Petitioner to mediate for a fee charged through the pilot program. (Pet. App. 189-A to 217-A). In addition, the trial court ordered the Petitioner to retain and compensate a private third party to whom judicial functions are assigned[4]. (Pet. App. 28-A to 32-A). Private third parties are commonly selected to perform judicial functions pursuant to Colorado's unconstitutional child and family law, policies, practices and procedures. (Pet. App. 103-A to 188-A).

The Petitioner had questioned the constitutionality of Colorado law, custom, policy, practices or procedure in the trial court[5]. (Pet. App. 22-A to 27-A). Thereafter, the trial court denied the Petitioner his right to notice of the proceedings, his right to equal protection under the law, and his right to confront the Special Advocate as a witness[6]. (Pet. App. 28-A to 32-A). The trial court continues to retaliate.

On May 3, 2005 the trial court ordered that no due process violation had occurred. (Pet. App. 28-A to 32-A). The Magistrate entered an order permanently enjoining the Petitioner from filing pleadings in accordance applicable Colorado statutes. (Pet. App. 15-A to 19-A; 28-A to 32-A; 40-A to 42-A).

The Petitioner instituted this original proceeding in the Colorado Supreme Court to redress, in part, the immediate

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[4] The Petitioner was ordered to retain Elizabeth Hollman of Katz & Loizeaux Forensic Services, L.L.C. to serve as a "Special Advocate." The term "Special Advocate" was replaced with "Family Court Investigator" by recently enacted legislation.

[5] Magistrate Beth Ellott-Dummler and the District Court of Douglas County in the State of Colorado.

[6] The third party is Elizabeth Hollman of Katz & Loizeaux Forensic Services, L.L.C. who served as a "Special Advocate."

and irreparable harm caused by the trial court. (Pet. App. 15-A to 19-A). The Colorado Supreme Court failed to protect the Petitioner's first amendment rights and dismissed this proceeding summarily and without opinion, on Petition for Rehearing, on May 26, 2005. (Pet. App. 1-A to 4-A).

CONSTITUTIONAL PROVISIONS

Amendment I, of the United States Constitution in relevant part:

Congress shall make no law abridging the right of

the people to petition the Government for a redress of grievances.

Amendment V, of the United States Constitution in relevant part:

No person shall be deprived of life, liberty, or property, without due process of law.

Amendment VI, of the United States Constitution in relevant part:

No person shall be deprived of life, liberty, or property, without due process of law.

Amendment XIV, Section 1, of the United States Constitution provides in relevant part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MATERIAL FACTS

The Colorado Supreme court denied the Petitioner's request for an order to show cause why the Chief Justice[7] should not require the trial court[8], the Magistrate[9], the Clerk[10], and the District[11] to accept the *pro se* pleadings in accordance with applicable law. (Pet. App. 1-A to 4-A). The order issued by the trial court[12] violated his first amendment rights and that right of equal access to the Colorado Courts.[13] (Pet. App. 5-A to 12-A). The Chief Justice of the Colorado Judicial Branch is responsible for the administration of Colorado child and family law, policy, practice and procedure. (Pet. App. 103-A to 188-A).

The Chief Justice presided over the *en banc* decision to deny the Petitioner's requests for relief from the trial court's denial of access[14]. (Pet. App. 1-A to 4-A). The result

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[7] Chief Justice Mary Mullarkey

[8] *Id.*

[9] Magistrate Beth Elliott-Dummler

[10] Cheryl Lane is the Clerk of the Douglas County Combined Courts.

[11] The Eighteenth Judicial District of the Colorado Judicial Branch.

[12] Magistrate Beth Elliott-Dummler of the Douglas County Combined Courts.

[13] Colorado Rule of Civil Procedure 121 § 1-25 permits filing via facsimile in the Colorado State Courts. The *pro se* Petitioner filed pleadings via facsimile, with the District Court for Douglas County, in accordance with the applicable law.

[14] The Petitioner filed the Petition for Relief with the Colorado Supreme Court late in the day on May 16th, 2005. The May 17th, 2005, date and designation of the hearing on the Petition as completed *en banc*. The May 17th, 2005, date and designation of the hearing on the Petition as

sharply contrasts with the Chief Justice's pledge to secure equal access to Colorado courts for the public.[15] (Pet. App. 218-A to 223-A). The Chief Justice administered a federal grant in furtherance of the policy goal of equal filing access for Colorado's *pro se* litigants. (Pet. App. 218-A to 223-A). The Chief Justice fails to administer Colorado courts in furtherance of the goal of equal access for *pro se* litigants. (Pet. App. 1-A to 4-A).

The Chief Justice creates, implements and administers the customs, practices and procedures governing Special Advocate appointments to Colorado courts. (Pet. App. 47-A to 55-A). These customs, practices or procedures are designed to protect third party appointees from accountability to the people of the State of Colorado. (Pet. App. 47-A to 55-A). The obstruction of a litigant's access to the Special Advocate's file, where the Petitioner's fundamental rights are implicated, violates the Petitioner's constitutional right confront a witness. (Pet. App. 5-A to 132-A). Lastly, where the Petitioner's fundamental rights are implicated, the Petitioner must receive actual notice of, and be afforded the opportunity to respond to, pleadings filed with the trial court. (Pet. App.5-A to 12-A).

The trial court's order violates the Petitioner's rights as protected by first, fifth, and fourteenth amendments. (Pet. App. 5-A to 12-A, 15-A to 19-A, 88-A to 99-A). The Petitioner's pleadings were sent back by the trial court. (Pet. App. 5-A to 12-A, 15-A to 19-A, 88-A to 99-A). The

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completed *en banc*, and the May 19th, 2005 date on the certificate of service, appear to be the result of a clerical or an administrative error.

[15] Chief Justice Mary Mullarkey pledged to the public that with the Federal Grant, Colorado's low-income *pro se* litigants would have e-filing access.